

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 149 of 2018

[CRIMINAL JURISDICTION]

STATE

V

ASHOK NARAYAN

Counsel : Ms. K. Semisi for the State
Ms. A. Singh with Ms. S. Hazelman for the Accused
Hearing on : 10 - 12 June 2019
Summing up on : 13 June 2019
Judgment on : 14 June 2019
Sentenced on : 18 June 2019

[The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "AN". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said complainant.]

SENTENCE

1. Ashok Narayan, you stand convicted of the following offence;

Statement of Offence

Sexual Assault: contrary to section 210 (1) (a) of Crimes Act of 2009.

Particulars of Offence

ASHOK NARAYAN between the 1st day of March 2015 and the 31st day of March 2015 at Nasinu in the Central Division unlawfully and indecently assaulted **AN**, a child under the age of 13 years, by rubbing her vagina.

2. You the victim's biological father. At the time of offence the victim was 11 years old and you were 46 years old. You and your wife got separated in March 2015. One night in March 2015 you spat on your hand and then rubbed it on your daughter's (victim) vagina using your fingers.
3. This offence you have committed, that is, sexually assaulting your own daughter portrays one of the worst form of breach of trust a father could commit against his child. Being the victim's father, you were supposed to be her most trusted guardian and protector from all evil.
4. The prosecution has taken steps to file a Victim Impact Statement which is prepared based on the counselling sessions the victim had undergone. In the said statement, under the heading Emotional and/or psychological effects, the impact of your conduct on her is reflected thus;

During my counselling session with the victim, I observed that she would experience intense feelings of distress when she was speaking of the incident. She would also break down in tears when recalling the incident. She would at some stages, in the counselling session, stare blankly without speaking. She feels betrayed and cannot believe that her father did a bad thing to her. She hates her father and does not wish to see him again. She was always angry and is trying to come to terms with what had happened to her. She would shut people out and refuse to speak to them.

5. So, instead of being her protector, you became her predator and you have made her experience an awful event that may most probably haunt her for the rest of her life.

6. The offence of sexual assault under section 210(1) of the Crimes Act carries a maximum sentence of 10 years imprisonment. The sentencing tariff for this offence is an imprisonment term between 2 to 8 years [*State v Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012)].
7. I consider the following as aggravating factors in this case;
 - a) There is a serious breach of trust;
 - b) The age disparity between you and the victim is 35 years and the victim was 11 years old at the time of offence.
 - c) You exploited the victim's vulnerability and naivety.
8. In the submission filed on mitigation it is submitted that you are currently supporting three children aged 17, 16 and 11 years. I do not find this to be a mitigating factor for two reasons. Firstly, you are a person who had committed sexual assault on another child of yours. When a father is found guilty for committing an offence on one of his children, the fact that he has other children to look after cannot be considered as a mitigating factor to reduce his sentence. On the other hand, an accused's personal circumstances cannot in anyway be regarded as mitigating factors.
9. Your counsel has submitted in the written submission on mitigation that you are a first offender. However, when the prosecution filed the antecedent report and pointed out that there are two previous convictions, the counsel requested this court to disregard that submission.
10. According to the previous conviction report, the second conviction included therein is one entered within the last 10 years. You have been convicted of the offence of Assault Causing Actual Bodily Harm on 23/07/2015. The time of offence relevant

to this case is March 2015. But you were charged for this case on 07/03/18. The information provided to me does not indicate the time you committed the offence which you were convicted on 23/07/15. In the circumstances, I will give you the benefit and regard you as a first offender. This is your only mitigating factor.

11. I select 02 years imprisonment as the starting point of your sentence. Considering the above aggravating factors I would add 05 years to your sentence, and would deduct 02 years in view of the fact that you are a first offender.
12. Accordingly, I sentence you to a term of 05 years imprisonment. I order that you are not eligible to be released on parole until you serve 03 years of your sentence in terms of section 18(1) of the Sentencing and Penalties Act.
13. It was submitted that you had been in custody from 07/03/18 to 11/06/18 and thereafter since 14/06/19 pending your sentence. Accordingly, you have been in custody for a period of 03 months and 08 days in view of this case. The period you had been held in custody shall be considered as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act.
14. In the result, you are sentenced to an imprisonment term of 05 years with a non-parole period of 03 years. In view of the time spent in custody, time remaining to be served is as follows;

Head Sentence - 04 years; 08 months and 22 days

Non-parole period - 02 years; 08 months and 22 days

15. Having considered the facts of this case, a permanent Domestic Violence Restraining Order is issued against you, identifying the victim 'AN' as the protected person. You are hereby ordered not to have any form of contact with the victim directly or by any other means, unless otherwise directed by this Court.

16. Thirty (30) days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused